Legislative Panel

Discussion Topics

Ceradyne, Inc. B-402281, Feb 2010

- Army awarded 4 IDIQ – 2 to LB and 2 to SB. Delivery orders competed among contract holders. Army set-aside three requirements for the 2 SBs. LB protested a subsequent SBSA of IDIQ orders.

- GAO: rule of two applies to competitions for task and delivery orders issued under MAC such as IDIQs.

- GAO Referenced Delex decision

Ceredyne, continued

GAO: “agencies…need only make an informed business judgment that there is a reasonable expectation of receiving acceptably priced offers from SB concerns that are capable of performing the contract.”

Protest denied – SBSA on MAC IDIQ was upheld.

Eagle Home Medical Corp, B-402387, March 2010

- VA did not change the NAICS code for a SBSA RFP after a protest; solicitation not amended. Buy was for rental and services; NAICS chosen was for supplies. Eagle appealed to OHA; OHA directed VA to change to services NAICS; VA did not. Eagle protested to GAO.
- GAO: Agreed with Eagle and SBA. "The agency violated procurement laws and regulations in failing to follow the OHA's decision…"

Database Consolidation

- GSA awarded a contract to consolidate the following databases…
  - FedBizOpps, Wage Determinations, CCR, Fed Agency Registration, ORCA, Past Performance Information Retrieval System, Excluded Parties List System, FPDS-NG, ESRS.
  - IBM won GSA contract to merge databases.
  - Cost savings, efficiency, streamlined tool anticipated.

Senate Bill – cleared committee

- Early March; Sen. Mary Landrieu
- Key areas: contract bundling, subcontracting, acquisition issues.
  - Provisions to make subcontracting plans be evaluated on percentage of obligated dollars and as a percentage of subcontract awards; extend “bundling” rules to federal agencies; increase oversight of primes who team with SBs; address late payments to subcontractors; seek repeal of Comp Demo program; sets criteria for setting aside FSS & GWAC orders.

SBA Proposed Rule – March 2010

- “Subtraction” – if a size decision (or appeal) occurs after award, KO must take some action (terminate award, not exercise option) and must apply the size decision to procurement for goal reporting purposes.
- NAICS on MACs – if a MAC has CLINS or SINs where awardees compete for orders, each CLIN or SIN should have single NAICS assigned.
- Gives SBA 15 days to decide size protest.

Program Parity

- SBA strongly supports legislation to clarify and reiterate Congress' original intent not to prioritize one SB development program over another.
- DOJ letter states the Mission Critical opinion only applies to the specific contract at issue in the case and not to operation of SBA's parity rule in general.

WOSB Program

- Restrict competition to WOSBs
- Six conditions to use WOSB reservation:
  - Company is WOSB (51% owned/controlled);
  - Rule of two applies;
  - NTE $5 m (supplies) or $3 m (all other);
  - Anticipate award at fair & reasonable price;
  - WOSB is properly certified or self-certified;
  - Requirement must be one of the designated NAICS codes.

WOSB Program

- WOSB and EDWOSB (economically disadvantaged) must be certified by a third-party (e.g., state or national group) or,
- Self-certify in ORCA. SBA proposes a WOSB repository of documents to support self-certification. (CCR already utilizes this approach.) Contracting officers, SBA, and the WOSB would have access to their information.

WOSB Program

- 83 NAICS Codes recommended by SBA
  - Under-represented; Significantly under-represented
- Comments are due by May 3, 2010
- Can download from US Women's Chamber of Commerce site

  (www.uswcc.org/wfpp)